

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

Todd M. Friedman, Esq. (SBN: 216752)
Nicholas J. Bontrager, Esq. (SBN: 252114)
Suren N. Weerasuriya, Esq. (SBN 278521)
tfriedman@attorneysforconsumers.com
nbontrager@attorneysforconsumers.com
sweerasuriya@attorneysforconsumers.com
369 S. Doheny Dr., #415
Beverly Hills, CA 90211
Telephone: (877) 206-4741
Facsimile: (866) 633-0228
[Other Counsel on Signature Page]

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**ALEXIOS KAFATOS,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**RESEARCH TRIANGLE
INSTITUTE,**

Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES**

JURY TRIAL DEMANDED

1. ALEXIOS KAFATOS (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of RESEARCH TRIANGLE INSTITUTE (“Defendant”), in negligently and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy.

1 Plaintiff alleges as follows upon personal knowledge as to himself and his own
2 acts and experiences, and, as to all other matters, upon information and belief,
3 including investigation conducted by his attorneys.

4 2. The TCPA was designed to prevent calls like the ones described
5 herein, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer
6 complaints about abuses of telephone technology – for example, computerized
7 calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims*
8 *v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

9 3. In enacting the TCPA, Congress intended to give consumers a choice
10 as to how corporate similar entities may contact them, and made specific findings
11 that “[t]echnologies that might allow consumers to avoid receiving such calls are
12 not universally available, are costly, are unlikely to be enforced, or place an
13 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In support
14 of this, Congress found that

15
16 [b]anning such automated or prerecorded telephone
17 calls to the home, except when the receiving party
18 consents to receiving the call or when such calls are
19 necessary in an emergency situation affecting the health
20 and safety of the consumer, is the only effective means
21 of protecting telephone consumers from this nuisance
22 and privacy invasion.

23 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
24 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on
25 TCPA’s purpose).

26 4. Congress also specifically found that “the evidence presented to the
27 Congress indicates that automated or prerecorded calls are a nuisance and an
28 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also,

1 *Mims*, 132 S. Ct. at 744.

2 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
3 TCPA case regarding calls to a non-debtor similar to this one:

4 The Telephone Consumer Protection Act ... is well
5 known for its provisions limiting junk-fax
6 transmissions. A less-litigated part of the Act curtails
7 the use of automated dialers and prerecorded messages
8 to cell phones, whose subscribers often are billed by the
9 minute as soon as the call is answered—and routing a
10 call to voicemail counts as answering the call. An
11 automated call to a landline phone can be an
annoyance; an automated call to a cell phone adds
expense to annoyance.

12 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

13 **JURISDICTION AND VENUE**

14 6. This Court has federal question jurisdiction because this case arises
15 out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.,*
16 *LLC*, 132 S. Ct. 740 (2012).

17 7. Venue is proper in the United States District Court for the Central
18 District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
19 Defendant is subject to personal jurisdiction in the County of Orange, State of
20 California and Plaintiff resides within the County of Orange, State of California.

21 **PARTIES**

22 8. Plaintiff is, and at all times mentioned herein was, a citizen and
23 resident of the State of California. Plaintiff is, and at all times mentioned herein
24 was, a “person” as defined by 47 U.S.C. § 153 (39).

25 9. Plaintiff is informed and believes, and thereon alleges, that
26 Defendant is, and at all times mentioned herein was, a corporation whose State of
27 Incorporation and principal place of business is in the State of North Carolina.
28

1 Defendant, is and at all times mentioned herein was, a corporation and is a
2 “person,” as defined by 47 U.S.C. § 153 (39). Plaintiff alleges that at all times
3 relevant herein Defendant conducted business in the State of California and in the
4 County of Orange, and within this judicial district.

5 **FACTUAL ALLEGATIONS**

6 10. At all times relevant, Plaintiff was a citizen of the State of California.
7 Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47
8 U.S.C. § 153 (39).

9 11. Defendant is, and at all times mentioned herein was, a corporation
10 and a “person,” as defined by 47 U.S.C. § 153 (39).

11 12. At all times relevant Defendant conducted business in the State of
12 California and in the County of Orange, within this judicial district.

13 13. Beginning in or around November of 2013, Defendant began to
14 utilize Plaintiff’s cellular telephone number ending in 3062 in attempting to
15 obtain information from Plaintiff as it pertained to alleged research study/survey
16 Defendant was performing for the Center of Disease Control (“CDC”).

17 14. Defendant placed these telephone calls from several numbers,
18 including but not limited to, (877) 294-1302 and (855) 500-1441.

19 15. Defendant placed these telephone calls on numerous occasions,
20 including but not limited to October 22, 2013, October 31, 2013, November 1,
21 2013, December 4, 2013, December 12, 2103 and December 20, 2013.

22 16. On several occasions, Plaintiff would answer Defendant’s call, and
23 eventually speak with a live agent, and request that Defendant cease placing call
24 to Plaintiff’s cellular telephone.

25 17. Despite these repeated requests, Defendant persisted with its
26 automated telephone calls to Plaintiff seeking information for the alleged
27 study/survey it was conducting.
28

1 18. The calls Defendant placed to Plaintiff's cellular telephone were
2 placed via an "automatic telephone dialing system," ("ATDS") as defined by 47
3 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

4 19. This ATDS has the capacity to store or produce telephone numbers
5 to be dialed, using a random or sequential number generator.

6 20. The telephone number that Defendant, or its agents, called was
7 assigned to a cellular telephone service for which Plaintiff incurs a charge for
8 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

9 21. These calls constituted calls that were not for emergency purposes as
10 defined by 47 U.S.C. § 227 (b)(1)(A)(i).

11 22. Plaintiff is neither a subscriber nor client of Defendant's services,
12 never contacted Defendant, nor provided Defendant with his personal information
13 or cellular telephone number. Furthermore, Plaintiff repeatedly demanded that any
14 and all calls to his cellular telephone must cease. Thus, at no time did Plaintiff
15 provide Defendant or its agents with prior express consent to receive unsolicited
16 telephone calls, pursuant to 47 U.S.C. § 227 (b)(1)(A).

17 23. These telephone calls by Defendant, or its agents, violated 47 U.S.C.
18 § 227(b)(1).

19
20 **CLASS ACTION ALLEGATIONS**

21 24. Plaintiff brings this action on behalf of himself and on behalf of and
22 all others similarly situated ("the Class").

23 25. Plaintiff represents, and is a member of, the Class, consisting of All
24 persons within the United States who received any telephone call/s from
25 Defendant or its agent/s and/or employee/s to said person's cellular telephone
26 made through the use of any automatic telephone dialing system within the four
27 years prior to the filing of the Complaint.
28

1 26. Defendant and its employees or agents are excluded from the Class.
2 Plaintiff does not know the number of members in the Class, but believes the
3 Class members number in the thousands, if not more. Thus, this matter should be
4 certified as a Class action to assist in the expeditious litigation of this matter.

5 27. Plaintiff and members of the Class were harmed by the acts of
6 Defendant in at least the following ways: Defendant, either directly or through its
7 agents, illegally contacted Plaintiff and the Class members via their cellular
8 telephones, thereby causing Plaintiff and the Class members to incur certain
9 cellular telephone charges or reduce cellular telephone time for which Plaintiff
10 and the Class members previously paid, and invading the privacy of said Plaintiff
11 and the Class members. Plaintiff and the Class members were damaged thereby.

12 28. This suit seeks only damages and injunctive relief for recovery of
13 economic injury on behalf of the Class, and it expressly is not intended to request
14 any recovery for personal injury and claims related thereto. Plaintiff reserves the
15 right to expand the Class definition to seek recovery on behalf of additional
16 persons as warranted as facts are learned in further investigation and discovery.

17 29. The joinder of the Class members is impractical and the disposition
18 of their claims in the Class action will provide substantial benefits both to the
19 parties and to the court. The Class can be identified through Defendant's records
20 or Defendant's agents' records.

21 30. There is a well-defined community of interest in the questions of law
22 and fact involved affecting the parties to be represented. The questions of law
23 and fact to the Class predominate over questions which may affect individual
24 Class members, including the following:

- 25
26 a) Whether, within the four years prior to the filing of this Complaint,
27 Defendant or its agents placed any calls to the Class (other than a
28 call made for emergency purposes or made with the prior express

1 consent of the called party) to a Class member using any automatic
2 dialing system to any telephone number assigned to a cellular phone
3 service;

- 4 b) Whether Plaintiff and the Class members were damaged thereby, and
5 the extent of damages for such violation; and
6 c) Whether Defendant and its agents should be enjoined from engaging
7 in such conduct in the future.

8
9 31. As a person that received such calls from Defendant via an
10 automated telephone dialing system, Plaintiff is asserting claims that are typical
11 of the Class. Plaintiff will fairly and adequately represent and protect the
12 interests of the Class in that Plaintiff has no interests antagonistic to any member
13 of the Class.

14 32. Plaintiff and the members of the Class have all suffered irreparable
15 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a
16 class action, the Class will continue to face the potential for irreparable harm. In
17 addition, these violations of law will be allowed to proceed without remedy and
18 Defendant will likely continue such illegal conduct. Because of the size of the
19 individual Class member's claims, few, if any, Class members could afford to
20 seek legal redress for the wrongs complained of herein.

21 33. Plaintiff has retained counsel experienced in handling class action
22 claims and claims involving violations of the Telephone Consumer Protection
23 Act.

24 34. A class action is a superior method for the fair and efficient
25 adjudication of this controversy. Class-wide damages are essential to induce
26 Defendant to comply with federal and California law. The interest of Class
27 members in individually controlling the prosecution of separate claims against
28 Defendant is small because the maximum statutory damages in an individual

1 action for violation of privacy are minimal. Management of these claims is likely
2 to present significantly fewer difficulties than those presented in many class
3 claims.

4 35. Defendant has acted on grounds generally applicable to the Class,
5 thereby making appropriate final injunctive relief and corresponding declaratory
6 relief with respect to the Class as a whole.

7
8 **FIRST CAUSE OF ACTION**
9 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
10 **PROTECTION ACT**
11 **47 U.S.C. § 227 ET SEQ.**

12 36. Plaintiff incorporates by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.

14 37. The foregoing acts and omissions of Defendant constitute numerous
15 and multiple negligent violations of the TCPA, including but not limited to each
16 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

17 38. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
18 seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory
19 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

20 39. Plaintiff and the Class are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **SECOND CAUSE OF ACTION**
23 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**
24 **CONSUMER PROTECTION ACT**
25 **47 U.S.C. § 227 ET SEQ.**

26 40. Plaintiff incorporates by reference all of the above paragraphs of this
27 Complaint as though fully stated herein.

28 41. The foregoing acts and omissions of Defendant constitute numerous
and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et
2 seq.

3 42. As a result of Defendant's knowing and/or willful violations of 47
4 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00
5 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
6 227(b)(3)(C).

7 43. Plaintiff and the Class are also entitled to and seek injunctive relief
8 prohibiting such conduct in the future.

9
10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
12 Class members the following relief against Defendant:

13 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**
14 **TCPA, 47 U.S.C. § 227 ET SEQ.**

15 44. As a result of Defendant's negligent violations of 47 U.S.C. §
16 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory
17 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

18 45. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
19 such conduct in the future.

20 46. Any other relief the Court may deem just and proper.

21 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
22 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

23 47. As a result of Defendant's knowing and/or willful violations of 47
24 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00
25 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §
26 227(b)(3)(C).

27 48. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
28 such conduct in the future.

1 49. Any other relief the Court may deem just and proper.

2 **TRIAL BY JURY**

3 50. Pursuant to the seventh amendment to the Constitution of the United
4 States of America, Plaintiff is entitled to, and demands, a trial by jury.

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6
7
8 Respectfully submitted on April 7, 2014

9 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

10
11
12 By: /s/Todd M. Friedman

13 Todd M. Friedman

14 Law Offices of Todd M. Friedman

15 Attorney for Plaintiff

16 **HYDE & SWIGART**

17 Joshua B. Swigart, Esq. (SBN: 225557)

18 josh@westcoastlitigation.com

19 2221 Camino Del Rio South, Suite 101

20 San Diego, CA 92108

21 Telephone: (619) 233-7770

22 Facsimile: (619) 297-1022

23 **KAZEROUNI LAW GROUP, APC**

24 Abbas Kazerounian, Esq. (SBN: 249203)

25 ak@kazlg.com

26 245 Fischer Avenue, Unit D1

27 Costa Mesa, CA 92626

28 Telephone: (800) 400-6808

Facsimile: (800) 520-5523